

ORDINANCE NO. 1654

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN FERNANDO, CALIFORNIA, AMENDING CHAPTER 22 (BUSINESSES) AND CHAPTER 106 (ZONING) TO EXPRESSLY PROHIBIT MEDICAL CANNABIS DISPENSARIES, MEDICAL CANNABIS CULTIVATION, CITY-BASED MEDICAL CANNABIS DELIVERY OPERATIONS, AND ALL COMMERCIAL CANNABIS ACTIVITIES IN ALL AREAS OF THE CITY, EXCLUDING MEDICAL CANNABIS DELIVERY ACTIVITIES ORIGINATING FROM LEGAL DISPENSARIES OUTSIDE OF THE CITY OF SAN FERNANDO

WHEREAS, in 1996, the California Legislature approved Proposition 215, also known as the Compassionate Use Act (the “CUA”), which was codified under Health and Safety Code Section 11262.5 et sec. and was intended to enable persons who are in need of medical marijuana for specified medical purposes, such as cancer, anorexia, AIDS, chronic pain, glaucoma and arthritis, to obtain and use marijuana under limited circumstances and where recommended by a physician; and

WHEREAS, the CUA provides that “nothing in this section shall be construed or supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes.”; and

WHEREAS, in 2004, the California Legislature enacted the Medical Marijuana Program Act (Health & Safety Code, § 11362.7 et seq.)(the “MMP”), which clarified the scope of the CUA, created a state-approved voluntary medical marijuana identification card program, and authorized cities to adopt and enforce rules and regulations consistent with the MMP; and

WHEREAS, Assembly Bill 2650 (2010) and Assembly Bill 1300 (2011) amended the MMP to expressly recognize the authority of counties and cities to “[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective” and to civilly and criminally enforce such ordinances; and

WHEREAS, California courts have found that neither the CUA nor the MMP provide medical marijuana patients with an unfettered right to obtain, cultivate, or dispense marijuana for medical purposes; and

WHEREAS, in 2013, the California Supreme Court in the case of *City of Riverside v. Inland Empire Patients Health and Wellness Center* (2013) 56 Cal.4th 729, found the CUA and MMP do not preempt a city’s local regulatory authority and confirmed a city’s ability to prohibit medical marijuana dispensaries within its boundaries; and

WHEREAS, in 2013, the California Third District Appellate Court held that state law does “not preempt a city’s police power to prohibit the cultivation of all marijuana within the city.”; and

WHEREAS, the Federal Controlled Substances Act (21 U.S. C., § 801 et seq.) makes it unlawful under federal law for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute, or dispense marijuana; and

WHEREAS, despite the above-referenced federal laws, on August 29, 2013, the United States Department of Justice issued a letter stating that one can reasonably expect the federal government to stand down and defer to state and local marijuana regulations that are strict and robust; and

WHEREAS, in September 2015, the California State Legislature enacted, and Governor Brown signed into law three bills – Assembly Bill 243, Assembly Bill 266, and Senate Bill 643 – which together comprise the Medical Marijuana Regulation and Safety Act (the “MMRSA”); and

WHEREAS, the MMRSA creates a comprehensive dual state licensing system for the cultivation, manufacture, retail, sale, transport, distribution, delivery, and testing of medical cannabis; and

WHEREAS, the MMRSA contains new statutory provisions that:

- Allow local government to enact ordinances expressing of their intent to prohibit the cultivation of marijuana and not administer a conditional use permit program pursuant to Health and Safety Code Section 11362.777 for the cultivation of marijuana (Health & Safety Code, § 11362.777(c)(4));
- Expressly provide that the Act does not supersede or limit local authority for local law enforcement activity, enforcement of local ordinances, or enforcement of local permit or licensing requirements regarding marijuana (Business & Professions Code, § 19315(a));
- Expressly provide that the Act does not limit the authority or remedies of a local government under any provision of law regarding marijuana, including, but not limited to, a local government’s right to make and enforce within its limits all police regulations not in conflict with its general laws (Business & Professions Code, § 19316(c));
- Require a local government that wishes to prevent marijuana delivery activity (as defined in Business and Professions Code Section 19300.5(m)) from operating within the local government’s boundaries to enact an ordinance affirmatively banning such delivery activity (Business & Professions Code, § 19340(a)); and

WHEREAS, pursuant to California Constitution Article XI, Section 7, the City of San Fernando (the “City”) has the authority to enact local planning and land use regulations to protect the public health, safety, and welfare of the City’s residents through its police power; and

WHEREAS, the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognizes that certain marijuana related commercial activities can create adverse impacts absent reasonable regulations to address these impacts; and

WHEREAS, the City Council finds that the limited immunity from specified state marijuana laws provided by the CUA, MMP, and MMRSA do not confer a land use right or the right to create or maintain a public nuisance; and

WHEREAS, the City Council finds that, although cannabis dispensaries, cannabis cultivation, cannabis deliveries, and commercial cannabis activities are prohibited in the City, pursuant to the tenets of permissive zoning, it is prudent to explicitly proscribe such activities in order to preclude ambiguity in the City's prohibition of such actions; and

WHEREAS, with regard to cannabis deliveries, Business and Professions Code Section 19340(a) of the MMRSA prohibits cannabis deliveries in cities that explicitly prohibit such deliveries by local ordinance; and

WHEREAS, the City Council wishes to allow certain commercial cannabis deliveries to locations within the City of San Fernando provided such deliveries originate from legal marijuana dispensaries located outside the territorial boundaries of the City of San Fernando; and

WHEREAS, adoption of this Ordinance would bar cannabis delivery operations headquartered in, or otherwise originating from, the City of San Fernando; and

WHEREAS, the Planning and Preservation Commission conducted a duly noticed public hearing on March 1, 2016 concerning the prospective recommendation set forth herein at which evidence, both written and oral, was presented; and

WHEREAS, the City Council public hearing was noticed in accordance with the requirements set forth in Government Code sections 65090 and 65091.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN FERNANDO, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The facts set forth in the recitals above are true and correct.

SECTION 2. Section 22-64 (Unlawful business not authorized) of Division 1 (Generally) of Article II (Licensing) of Chapter 22 (Businesses) of the San Fernando Municipal Code is amended in its entirety to read as follows:

Sec. 22-64 Unlawful business not authorized.

- (a) No license issued under this article shall be construed as authorizing the conduct or continuance of any illegal or unlawful business or the provision or sale of any service or product that is illegal under the laws of the United States or the State of California, or any ordinance of the city. Notwithstanding any provision of this Code to the contrary, no business license shall be issued for any use of land, operation, or business in all planning

areas, districts, or zones within the city that is in violation of local, state and/or federal law.

- (b) Except as otherwise authorized under Section 106-1495 of the San Fernando Municipal Code, no license shall be issued under this article relating to the establishment and/or operation of any business or the provision or sale of any service or product relating to cannabis dispensaries, cannabis cultivation, cannabis deliveries, and commercial cannabis activities, as such terms are defined in Section 106-1493.

SECTION 3. Article VI (General Regulations) of Chapter 106 (Zoning) of the San Fernando City Code is amended by the addition of Division 18 (Medical Marijuana/Cannabis Prohibitions), which shall read as follows:

Division 18 – Medical Marijuana/Cannabis Prohibitions

Sec. 106-1493 Definitions.

“Cannabis” shall have the same meaning as set forth in California Business and Professions Code Section 19300.5(f), as the same may be amended from time to time.

“Caregiver” or “primary caregiver” shall have the same meaning as set forth in California Business and Professions Code Section 11362.7, as may be amended from time to time.

“Commercial cannabis activity” shall have the same meaning as set forth in California Business and Professions Code Section 19300.5(k), as the same may be amended from time to time, and shall include, but not be limited to the cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, or sale of medical cannabis or a medical cannabis product.

“Cooperative” or “collective” shall mean two or more persons collectively or cooperatively cultivating, using, transporting, possessing, administering, delivering, or making available cannabis, with or without compensation.

“Cultivation” or “Cultivate” shall have the same meaning as set forth in California Business and Professions Code Section 19300.5(l), as the same may be amended from time to time.

“Delivery” shall have the same meaning as set forth in California Business and Professions Code Section 19300.5(m), as the same may be amended from time to time.

“Dispensary” shall have the same meaning as set forth in California Business and Professions Code Section 19300.5(n), as may be amended from time to time. For purposes of this Division 18, and Section 22-64, “dispensary” shall also include a cooperative/collective.

“Distribution” shall have the same meaning as set forth in California Business and Professions Code Section 19300.5(p), as may be amended from time to time.

“Manufacturing” shall mean and refer to the activities of “manufacturers” at “manufacturing sites,” as such terms are defined in California Business and Professions Code Section 19300.5(y) and 19300.5(af), respectively.

“Medical cannabis,” “medical cannabis product,” and “cannabis product” shall have the same meaning as set forth in California Business and Professions Code Section 19300.5(ag), as may be amended from time to time.

“Medical Marijuana Regulation and Safety Act” or “MMRSA” shall mean and refer to California Assembly Bill 243, California Assembly Bill 266, and California Senate Bill 643, as may be amended from time to time.

“Qualifying patient” or “qualified patient” shall have the same meaning as set forth in California Business and Professions Code Section 11362.7, as may be amended from time to time.

Sec. 106-1494 Prohibitions.

- (a) Cannabis dispensaries, cannabis cultivation, cannabis deliveries, and commercial cannabis activities are expressly prohibited in all zones throughout the City.
- (b) The prohibitions set forth in this Section 106-1494 shall apply to all activities for which a State of California license is required pursuant to the MMRSA, which shall preclude the City’s provision or issuance of any permit, license, entitlement, and/or approval for any activity is required under the MMRSA.
- (c) To any extent not prohibited under Subsection (a) of this Section 106-1494, cultivation by a qualified patient and/or a primary caregiver, is expressly prohibited in all zones in the City. No person, including a qualified patient and/or a primary caregiver, shall cultivate any amount of cannabis in the City, even for medical purposes.

Sec. 106-1495 Limited Deliveries Permitted.

- (a) Notwithstanding the prohibitions set forth in Section 106-1494, cannabis deliveries may be permitted to a qualified patient or primary caregiver in possession of a valid, State of California-issued identification card, issued pursuant to Business and Professions Code Section 19300.5(w), from a legally operating, licensed dispensary, located outside of the City of San Fernando in possession of a current and valid City-issued permit (“Police Department Safety Permit”) issued in accordance with this Section 106-1495, as specified.
- (b) Application. The form and content of the application for a Police Department Safety Permit shall be approved by the Chief of Police. The application shall be signed under penalty of perjury, and the following standards constitute the minimum application standards to qualify for a permit to deliver cannabis pursuant to this Section 106-1495:
 - (1) Name, address, and contact information of the applicant; if the applicant is a corporation, the names and addresses of its directors;

- (2) Name, address, and contact information of the applicant's business;
 - (3) Current and valid proof of their permit(s) to operate a dispensary from the outside licensing city and/or county in which such dispensary is located;
 - (4) Upon commencement of the State of California's issuance of licenses under the MMRSA, current and valid proof of a license issued by a state licensing authority, as defined in Business and Professions Code Section 19300.5(w);
 - (5) Acord insurance forms indicating applicant's ability to comply with the insurance requirements set forth in this Section 106-1495;
 - (6) Listing of all vehicles, devices, and platforms used by the applicant for delivery of cannabis, pursuant to this Section 106-1495, including the vehicle's make, model, year, license plate number and vehicle identification number;
 - (7) Proof of current and valid California Department of Vehicle registration for all vehicles applicant shall use for delivery of cannabis, pursuant to this Section 106-1495;
 - (8) Copies of a valid, government-issued identification for all persons that the applicant will use to delivery cannabis pursuant to this Section 106-1495. All such persons must be at least 21 years of age at the time of submittal of the application for cannabis delivery.
- (c) Review of the Application. The Chief of Police shall consider the application, as well as the criminal records, if any, and personal references, if demanded by the Chief of Police, of individuals identified in the application, and any other results from investigation into the application, as deemed necessary by the Chief of Police.
- (d) Disapproval of the Application. If the Chief of Police disapproves of an application sought under this Section 106-1495, he or she shall notify the applicant in writing, stating the reasons for the disapproval. Notification of the disapproval shall be delivered by first class mail to the applicant.
- (e) Appeal of Disapproval.
- (1) Within fifteen (15) calendar days of transmittal of the Chief of Police's notice of disapproval of an application, the applicant denied approval may appeal the disapproval by notifying the City Clerk in writing of the appeal, the reasons for the appeal, and payment of any accompanying fees.
 - (2) The City Clerk shall set a hearing on the appeal and shall fix a date and time certain, within thirty (30) calendar days after the receipt of the applicant's appeal, unless the City and the applicant agree to a longer period of time to consider the appeal. The City Clerk shall provide notice of the date, time, and place of the hearing, at least seven (7) calendar days prior to the date of the hearing.

- (3) The City Manager shall appoint a hearing officer to hear the appeal and determine the order of procedure, and rule on objections to the admissibility of evidence. The applicant and the Chief of Police shall each have the right to submit documents, call and examine witnesses, cross-examine witnesses, and argue their respective positions.
 - (4) The proceeding shall be informal, and the strict rules of evidence shall not apply, and all evidence shall be admissible which is of the kind that reasonably prudent persons rely upon in making decisions.
 - (5) The hearing officer shall issue a written decision within fifteen (15) days after the close of the hearing. The decision of the hearing officer shall be final.
- (f) Grounds for Denial, Revocation, or Suspension of Permit. The granting of a Police Department Safety Permit or a renewal thereof may be denied and an existing permit revoked or suspended if the applicant, permittee, or any individual employed or acting as an agent for an applicant or permittee to deliver cannabis in the City does any of the following:
- (1) Knowingly makes a false statement in the application or in any other reports or other documentation furnished to the City;
 - (2) Engages vehicles for delivery that are not maintained or operated in a manner and in a condition required by law and applicable regulations;
 - (3) Has been convicted of any offense relating to the use, sale, possession, or transportation of a controlled substance;
 - (4) Has been convicted of any felony, convicted of any offense involving moral turpitude, convicted of driving under the influence of alcohol or drugs, or does not possess a driver's license;
 - (5) Has been involved in three (3) or more motor vehicle collisions within the year preceding the application;
 - (6) Utilizes vehicles or delivery personnel for deliveries, which are not identified to the City in its application;
 - (7) Fails to pay required City fees and taxes; or
 - (8) Violates any provision of this Section 106-1495.
- (g) Suspension and Revocation.
- (1) If the Chief of Police determines that the activities of a holder of a Police Department Safety Permit issued under this Section 106-1495 constitute a significant threat to the public health, safety, and/or welfare, the Chief of Police may suspend such permit and the rights and privileges thereunder until a hearing officer renders a written decision on the revocation of such permit.

- (2) The Chief of Police shall give notice to a permittee of his or her intent to revoke a Police Department Safety Permit in the same manner as a notice of disapproval and provide the City Clerk with a copy of such notice.
 - (3) The hearing for the revocation of a Police Department Safety Permit shall be set and conducted in the same manner as an appeal of disapproval. The decision of the hearing officer shall be final.
- (h) Permittee Obligations. Individuals issued permits under this Section 106-1495 shall have all of the following duties and obligations:
- (1) Comply with all applicable federal, state, and local laws;
 - (2) Obtain and maintain a business license from the City;
 - (3) Maintain, at all times, all licenses and permits required by state and local laws and provide immediate notification to the Chief of Police if any such state and/or local license and/or permit is revoked or suspended;
 - (4) All deliveries must be packaged in compliance with Business and Professions Code Section 19347 and any other regulations promulgated by the California Department of Health;
 - (5) Any person who delivers cannabis pursuant to a permit issued under this Section 106-1495 shall keep a copy of such permit in his or her possession while effectuating any and all deliveries pursuant to such permit and shall make such permit copy available to law enforcement, upon request;
 - (6) No authorized delivery vehicle shall have (or have affixed to it) any form of advertising that displays or depicts the permittee's name, telephone number, fax number, e-mail address, internet homepage address or any other images, text or markings that promote the permittee's cannabis-related activities or that identify the vehicle as containing cannabis products. The foregoing shall not be interpreted to relieve the permittee and its personnel of the obligation to have in their possession a copy of the Police Department Safety Permit while effectuating any deliveries.

Deliveries shall be made directly to the residence or business address of the qualified patient or the qualified patient's primary caregiver, upon proof of a valid, State of California-issued identification card, issued pursuant to Business and Professions Code Section 19300.5(w). All other deliveries are prohibited;
 - (7) Deliveries shall occur only between the hours of 6:00 a.m. and 6:00 p.m.;
 - (8) No permittee shall transport or cause to be transported cannabis in excess of the limits established by the State Bureau of Medical Marijuana. Until such limits are established, the limit shall be two (2) pounds of dried marijuana or its cannabis product equivalent;

- (9) All orders to be delivered shall be packaged by the name of the qualified patient or qualified patient if the delivery is made directly to him or her or by the name of both the qualified patient and primary caregiver if the delivery is made to the primary caregiver. All orders shall include a copy of the request for delivery with each package;
- (10) Maintain at all times Comprehensive Automobile Liability (owned, non-owned, hired) providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage, and personal injury, with limits of not less than One Million Dollars (\$1,000,000). Failure to maintain such insurance shall be a ground for denial of an application, suspension of a permit, and or revocation of a permit; and
- (11) By accepting a permit issued under this Section 106-1495, each permittee agrees to indemnify, defend and hold harmless to the fullest extent permitted by law, the City, its officers, agents and employees from and against any all actual and alleged damages, claims, liabilities, costs (including attorney's fees), suits or other expenses resulting from and arising out of or in connection with permittee's operations, except such liability causes by the active negligence, sole negligence of willful misconduct of City, its officers, agents and employees.
- (i) Fees. Applicants and permittees shall pay all applicable fees as set forth by resolution of the City Council. Applicants and permittees shall also pay the amount as prescribed by the Department of Justice of the State of California for the processing of fingerprinting. None of the above fees shall be prorated or refunded in the event of a denial, suspension, or revocation of the application or permit.
- (j) Term. All permits issued pursuant to this Section 106-1495 shall only be valid from the date of issuance through December 31 of the calendar year in which they are issued. The renewal process for the permit shall be processed in the same manner as the initial application.
- (k) Chief of Police or Designee. Any action required by the Chief of Police under this Section 106-1495 may be fulfilled by the Chief of Police's specified designee.

Sec. 106-1496 Nuisance.

Any use or condition caused, or permitted to exist, in violation of any provision of this Division 18 shall be, and is hereby declared to be, a public nuisance and may be summarily abated by the City pursuant to California Code of Civil Procedure Section 731, Article V (Nuisances) of Chapter 1 (General Provisions and Penalties) of the San Fernando City Code, and/or any other remedy available at law.

Sec. 106-1497 Civil Penalties.

In addition to any other enforcement remedies available under the San Fernando City Code, the City Attorney may bring a civil action for injunctive relief and civil penalties against any person

who violates any provision of this Division 18. In any civil action that is brought pursuant to this Division 18, a court of competent jurisdiction may award civil penalties and costs to the prevailing party.

SECTION 4. CEQA. As determined by the Planning and Preservation Commission on March 1, 2016 through Resolution No. 2016-004, the proposed Ordinance does not have the potential to cause significant effects on the environment and is exempt from the California Environmental Quality Act (“CEQA”), pursuant to CEQA Guidelines Section 15061(b)(3), because it amends the San Fernando City Code to make clear that on cannabis dispensaries, cannabis cultivation, cannabis deliveries, and commercial cannabis activities are not permitted in the City. Therefore, based on the evaluation of adverse impacts, it can be seen with certainty that there is no possibility that the establishment of bans on cannabis-related activities will have a significant effect on the environment.

SECTION 5. Inconsistent Provisions. Any provision of the San Fernando City Code or appendices thereto that conflicts with the provisions of this Ordinance, to the extent of such conflict and no further, is hereby repealed or modified to the extent necessary to affect the provisions of this Ordinance.


SECTION 6. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrase would be subsequently declared invalid or unconstitutional.

SECTION 7. Publication. The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. The City Clerk shall cause the same to be published once in the official newspaper within fifteen (15) days after its adoption. This Ordinance shall become effective thirty (30) days after adoption.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of San Fernando at its regular meeting on this 16th day of May, 2016.


Robert C. Gonzales, Mayor

ATTEST:


Elena G. Chávez, City Clerk

APPROVED AS TO FORM:


Rick R. Olivarez, City Attorney

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS
CITY OF SAN FERNANDO)


I, Elena G. Chávez, City Clerk of the City of San Fernando, do hereby certify that the above and foregoing Ordinance No. 1654 was introduced at the regular meeting of the City Council held on 2nd day of May 2016, and thereafter at the regular meeting of said City Council, duly held on the 16th day of May 2016, was passed and adopted by the following votes to wit:

AYES: Ballin, Fajardo, Lopez, Soto – 4

NOES: None

ABSTAIN: None

ABSENT: Gonzales – 1


Elena G. Chávez, City Clerk